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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/633,088	08/01/2003	Javier Garza Laguera Garza	35165552.13UTIL	3204

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BAKER & MCKENZIE  
PATENT DEPARTMENT  
2001 ROSS AVENUE  
SUITE 2300  
DALLAS, TX 75201

EXAMINER

HUYNH, KHOA D

ART UNIT	PAPER NUMBER
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3751

DATE MAILED: 01/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/633,088	<b>Applicant(s)</b> LAGUERA GARZA ET AL. <i>ed</i>	
	<b>Examiner</b> Khoan D. Huynh	<b>Art Unit</b> 3751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 05 November 2004.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1,3-16 and 18-29 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3-16 and 18-29 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 10 and 15, are rejected under 35 U.S.C. 102(b) as being anticipated by Moore (2104714).

Regarding claim 10, the Moore reference discloses a toilet seat (Fig. 1).

The toilet has an inner rim, an outer rim and two vertically extending rigid members (22) located between the inner and outer rims of the left side and the right side of the toilet seat. The two vertically extending rigid members are positioned for alignment with the interior edge of the toilet bowl (Fig. 4) to prevent lateral displacement of the seat. Regarding the amended limitation that “the vertically extending rigid members are integral to the seat”, once the vertically extending rigid members are assembled to the seat, they are the “integral” component of the seat.

Regarding claim 15, the seat further includes a plurality of radially disposed support members (21) on the bottom surface of the toilet seat.

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1 and 3-9, as presently understood and given the broadest reasonable interpretations, are rejected under 35 U.S.C. 103(a) as being unpatentable over Kayahara (6292956).

Regarding claim 1, the Kayahara reference discloses a toilet apparatus. The toilet apparatus includes a base portion (the floor contacting portion of element 7) and a bowl portion (about 3). The Kayahara reference DIFFERS in that it does not specifically include the dimensions of the base portion and the bowl portion as claimed. It, however, would have been obvious to one of ordinary skill in the art at the time the invention was made to employ any of one such width and length for the base portion and the bowl portion since discovering optimum values for such width and length of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980). Regarding the amended limitation, if Figure 1 is cross-sectioned and looking in from the front end (similar to applicant cross-sectioned as shown in Figure 2), then the base portion also includes a reinforced portion having a plurality of walls (at 7) vertically extending from the base portion to the bowl portion.

Regarding claims 3-5, the reinforced portion (at 7) is aligned and corresponding with an anchorage point (about 9). Specifically, the anchorage

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point comprises two anchorage points (about 9a) corresponding to the two reinforcing portions (at 7) are located on opposite sides of the base portion.

Regarding claims 6, the modified Kayahara reference DIFFERS in that it does not specifically disclose that the anchorage points located about 8.95 inches as claimed. However, it would have been obvious to one of ordinary skill in the art at the time the invention was made to mount the anchorage points about 8.95 inches since discovering an optimum value for such mounting locations involves only routine experiment or trial and error for one of skill in the art.

Regarding claim 7, the modified Kayahara also reference DIFFERS in that it does not specifically include the width and the length of the reinforced portion as claimed. It, however, would have been obvious to one of ordinary skill in the art at the time the invention was made to employ such width and length for the base portion since discovering an optimum value for width and length of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

Regarding claims 8, the modified Kayahara also reference DIFFERS in that it does not specifically disclose the thickness of the wall of the base portion at least about .39 inches as claimed. However, it would have been obvious to one of ordinary skill in the art at the time the invention was made to employ such thickness of the wall of the base portion since discovering an optimum value for

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such thickness involves only routine experiment or trial and error for one of skill in the art.

Regarding claims 9, the modified Kayahara also reference DIFFERS in that it does not specifically disclose the height of the toilet apparatus is greater than about 17 inches as claimed. However, it would have been obvious to one of ordinary skill in the art at the time the invention was made to employ such height for the toilet apparatus since discovering an optimum value for such height involves only routine experiment or trial and error for one of skill in the art.

5. Claims 11-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Moore (as discussed supra).

Regarding claim 11, the Moore reference DIFFERS in that it does not specifically include the width and length of the toilet seat as claimed. It, however, would have been obvious to one of ordinary skill in the art at the time the invention was made to employ any of one such width and length for the toilet seat since discovering optimum values for such width and length involves only routine experiment or trial and error for one of skill in the art, especially since the Moore toilet seat is adjustable to various width to accommodate users of different sizes.

Regarding claim 12, the Moore reference also DIFFERS in that it does not specifically disclose that the width of the aperture formed by the inner rim is less than about half the width of the toilet seat as claimed. It, however, would have been obvious to one of ordinary skill in the art at the time the invention was made

to employ such width of the aperture formed by the inner rim for the toilet seat since discovering optimum value for such width involves only routine experiment or trial and error for one of skill in the art, especially since the Moore toilet seat is adjustable to various width to accommodate users of different sizes (Fig. 1).

Regarding claim 13, the Moore reference also DIFFERS in that it does not specifically disclose that the length of the aperture formed by the inner rim is greater than about  $2/3$  the length of the toilet seat as claimed. It, however, would have been obvious to one of ordinary skill in the art at the time the invention was made to employ such length of the aperture formed by the inner rim for the toilet seat since discovering optimum value for such length of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

Regarding claim 14, the Moore reference also DIFFERS in that it does not specifically disclose that the width of the aperture formed by the inner rim about 8.2 inches and the length of the aperture formed by the inner rim about 16.7 inches as claimed. It, however, would have been obvious to one of ordinary skill in the art at the time the invention was made to employ such width and length of the aperture formed by the inner rim for the toilet seat since discovering optimum value for such width and length involves only routine experiment or trial and error for one of skill in the art.

6. Claims 16 and 18-29, as presently understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over Moore (2104714) in view of Kayahara (6292956).

Regarding claim 16, the Moore reference discloses a toilet seat having claimed features as discussed above. The Moore reference does not specifically disclose a toilet base portion and a toilet bowl portion as claimed. Attention, however, is directed to the Kayahara reference which discloses a toilet having a base portion and a bowl portion (as discussed supra). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the Moore reference by employing a toilet having a base portion and a bowl portion in view of the teaching of Kayahara. Such modification would be considered a mere substitution of one functionally equivalent toilet with a base portion and a bowl portion for another within the toilet apparatus art that would work equally well on the Moore device. Furthermore, claim 16 only recites the elements individually (i.e. a base portion, a bowl portion and a toilet seat) and fails to provide structural connections between the elements. Thus, the combination of the Moore and Kayahara does teach applicant's invention as claimed.

Claims 18-29 are similar to claims 3-9 and 11-14 and rejected as discussed above.

#### ***Response to Amendment***

7. Applicant's amendment, filed on 11/05/2004, to the pending claims is insufficient to distinguish the claimed invention from the cited prior art or overcome the rejections as discussed above.



***Response to Arguments***

8. Applicant's arguments filed on 11/05/2004 with respect to the pending claims have been fully considered. However, they are deemed not persuasive.

Applicant asserts that Moore does not teach the amended limitation that is "the vertically extending rigid members are integral to the seat". See Remarks section, page 9. The Examiner is respectfully traversed. As stated above, once the vertically extending rigid members are attached to the seat, they are "integral" to the seat. Thus, the Moore reference does teach applicant's invention as claimed.

Applicant also asserts that Kayahara does not teach the amended limitation that is "the reinforced portion vertically extending from the bottom...to the bowl portion". See Remarks section, page 10. The Examiner is respectfully traversed. As discussed supra, if Figure 1 is cross-sectioned and looking in from the front end (similar to applicant cross-sectioned as shown in Figure 2), then the base portion does include a reinforced portion having a plurality of walls (at 7) vertically extending from the base portion to the bowl portion. Thus, the Kayahara reference does teach the amended limitation.

Applicant also asserts that it is not obvious to combine references to arrive at applicant's invention as claimed. See the Remarks section, pages 11-12. The examiner recognizes that references cannot be arbitrarily combined and that there must be some reasons why one skilled in the art would be motivated to make the proposed combination of primary and secondary references. *In re Nomiya*, 184 USPQ 607 (CCPA 1975). However, there is no requirement that a motivation to make the

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modification be expressly articulated. The test for combining references is what the combination of disclosures taken as a whole would suggest to one of ordinary skill in the art. *In re McLaughlin*, 170 USPQ 209 (CCPA 1971). References are evaluated by what they suggest to one versed in the art, rather than by their specific disclosures. *In re Bozek*, 163 USPQ 545 (CCPA 1969).

In this case, The Moore reference discloses a toilet seat having claimed features as discussed supra, except a toilet base portion and a toilet bowl portion as claimed. Kayahara, however, is relied upon for the teaching of a toilet having a base portion and a bowl portion (as discussed supra). Such modification would be considered a mere substitution of one functionally equivalent toilet with a base portion and a bowl portion for another within the toilet apparatus art that would work equally well on the Moore device. Furthermore, claim 16 only recites the elements individually (i.e. a base portion/a bowl portion and a toilet seat) and fails to provide structural connections between the elements. Thus, the combination of the Moore and Kayahara does arrive to the applicant's invention as claimed.

The discussion of the "Commercial Success" is acknowledged. However, the claims remain rejected over the cited prior art as discussed supra.

### **Conclusion**

9. Applicant's amendment necessitated the revised grounds of rejections presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Khoa D. Huynh whose telephone number is (571) 272-4888. The examiner can normally be reached on M-F (7:00-4:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory Huson can be reached on (571) 272-4887. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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A handwritten signature in black ink, appearing to read 'Khoa D. Huynh', with a horizontal line underneath.

Khoa D. Huynh  
Patent Examiner  
Art Unit 3751

HK  
01/21/2005